

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY WILLIAMS,	§
	§ No. 409, 2005
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
DCSE/MARGARET MERCER,	§ Petition No. 04-34931
	§ File No. CN03-06574
Petitioner Below-	§
Appellee.	§

Submitted: December 1, 2006

Decided: January 16, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

**ORDER<sup>1</sup>**

This 16<sup>th</sup> day of January 2007, upon consideration of the briefs of the parties, the record below, the Family Court’s supplemental decision following remand and the parties’ supplemental memoranda, it appears to the Court that:

(1) The respondent-appellant, Jeffrey Williams (“Father”), has appealed the Family Court’s August 4, 2005 order affirming a commissioner’s order dated April 12, 2005 and the Family Court’s supplemental decision following remand dated October 5, 2006. We find no

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<sup>1</sup> The Court has sua sponte assigned pseudonyms to the parties in this case, as well as their minor child. Supr. Ct. R. 7(d).

merit to the appeal. Accordingly, we affirm the judgment of the Family Court.

(2) Father and petitioner-appellee, Margaret Mercer (“Mother”), are the divorced parents of Michael T. Williams-Mercer, born February 28, 2001. The record reflects that, in March 2004, the Family Court, in accordance with an interim consent order, granted Mother primary residential custody of Michael and granted Father visitation. On October 11, 2004, Mother filed a petition for child support. A hearing on the petition was held before a Family Court commissioner on April 12, 2005. Both Mother and Father appeared, as well as an attorney representing the Delaware Division of Child Support Enforcement (“DCSE”).

(3) At the hearing, Father argued that, although Mother had been granted primary residential custody of Michael, Michael had spent approximately 170 overnights with him during the previous year. Father submitted a calendar in support of that contention. Father also presented evidence that he has a disability due to asthma and collects supplemental security income (“SSI”) payments as a result. He also testified, however, that he is able to work 4 hours a day.

(4) Following the hearing, the commissioner issued an order establishing Father’s child support obligation. The commissioner found that

Father's asthma did not prevent him from working and attributed income to him in the amount of \$7.50 per hour based upon a work-week of 4 hours per day, 7 days per week. The commissioner applied a 40% "parenting time adjustment" to Father's child support obligation, which gave him credit for the time Michael spends with him beyond the formal visitation schedule and also gave Father credit for child support owed to two of his three other children.<sup>2</sup> Finally, the commissioner attributed income to Father of \$579.00 per month, representing the amount of his SSI check. The commissioner's order required Father to pay a total of \$269.00 each month, representing \$264.00 in current support and \$5.00 in arrears.

(5) Father filed an appeal to a Family Court judge from the commissioner's order.<sup>3</sup> In his appeal, Father claimed that the commissioner improperly based the child support calculation on the visitation schedule contained in the Family Court's March 2004 custody/visitation order rather than the actual time Michael spent with him. Father further claimed that his contribution towards Michael's clothing and medicine is higher than Mother's. On August 4, 2005, the Family Court issued an order wholly

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<sup>2</sup> There was no evidence that Father provided any support for the third child, who was a newborn.

<sup>3</sup> Del. Code Ann. tit. 10, § 915(d) (1) (The Family Court "shall make a de novo determination of those portions of the Commissioner's order to which objection is made.")

accepting the commissioner's order, finding that the commissioner had committed no error or abuse of discretion.

(6) In his appeal, Father claimed that the commissioner not only improperly relied upon the court-ordered visitation schedule in establishing his child support obligation, but also failed to take into account the support he must provide to his other three minor children. Father also claimed that the commissioner should not have attributed any income to him because he is unable to work due to his disability. While DCSE argued in its answering brief that those findings by the commissioner should be affirmed, it also pointed out that the commissioner erred by including the amount of Father's SSI checks in calculating his child support obligation.

(7) This Court remanded the matter to the Family Court, first, for confirmation of the type of benefits Father was receiving and, second, for a determination of whether such benefits were properly included as income when calculating the amount of child support owed. Following remand, the Family Court issued a supplemental decision, which confirmed that Father was receiving SSI payments and concluded that, according to the Instructions for Child Support Calculations (1998), such payments are excluded as income for purposes of calculating the amount of child support owed. Without disturbing any of the other findings by the commissioner,

the Family Court found that the commissioner had erred by including Father's SSI payments and, after doing a re-calculation, concluded that Father did not owe any child support.<sup>4</sup> In its supplemental memorandum, DCSE concedes that Father owes no child support at this time.

(8) This Court's standard of review of the Family Court's adoption of a commissioner's order is to examine the record for legal error and abuse of discretion.<sup>5</sup> We will not disturb legal rulings or findings of fact unless they are clearly wrong.<sup>6</sup> We will affirm the inferences and deductions of the Family Court if they are supported by the record and are the product of an orderly and logical deductive process.<sup>7</sup>

(9) We have reviewed the transcript of the child support hearing and, with the exception of the initial inclusion of Father's SSI payments, find no support for Father's claims of error and abuse of discretion on the part of the commissioner. The commissioner otherwise properly applied the Melson Formula,<sup>8</sup> appropriately taking into account the visitation schedule contained in the Family Court's March 2004 custody/visitation order, taking

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<sup>4</sup> The Family Court observed that Father's monthly gross income of \$910.00 "barely covers his basic needs."

<sup>5</sup> *Jones v. Lang*, 591 A.2d 185, 187 (Del. 1991).

<sup>6</sup> *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

<sup>7</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

<sup>8</sup> Under the Melson Formula, the amount of child support to be paid is calculated after determining the monthly net income of each parent, the primary support needs of the child and then making a standard of living adjustment. Fam. Ct. Civ. R. 52(c).

into consideration the other children for whom Father provides support, and, finally, weighing Father's evidence supporting his disability. On remand, the Family Court correctly concluded that the SSI payments should not have been included in the child support calculation and that Father currently owes no child support.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice